

1 ROBERT G. HULTENG, Bar No. 071293
2 LAURA TOVAR, Bar No. 335014

2 rhulteng@littler.com
3 ltovar@littler.com
4 LITTLER MENDELSON, P.C.
5 333 Bush Street
6 34th Floor
7 San Francisco, California 94104
8 Telephone: 415.433.1940
9 Facsimile: 415.399.8490

10 Attorneys for Defendants

11 PLEASANTON AUTOMOTIVE COMPANY, dba
12 PLEASANTON AUTO MALL dba ACURA OF
13 PLEASANTON; LOP AUTOMOTIVE COMPANY
14 LIMITED PARTNERSHIP f/k/a LOP AUTOMOTIVE
15 COMPANY LLC dba LEXUS OF PLEASANTON;
16 ROSEWOOD III AUTOMOTIVE COMPANY, dba
17 INFINITI OF PLEASANTON; HENDRICK
18 AUTOMOTIVE GROUP; HPG AUTO INVESTORS
19 LIMITED PARTNERSHIP; HENDRICK
20 MANAGEMENT COMPANY LIMITED
21 PARTNERSHIP

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1 AUTOMOTIVE INDUSTRIES PENSION TRUST FUND;
2 AUTOMOTIVE INDUSTRIES WELFARE TRUST
3 FUND; JAMES H. BEMNO, Trustee; DON CROSATOO,
4 Trustee; JOHN DI BERNARDO, Trustee; RYAN
5 THIBODEAU, Trustee; and RICH MORALES, Trustee,

6 Plaintiffs,
7 v.
8 PLEASANTON AUTOMOTIVE COMPANY, a general
9 partnership, dba PLEASANTON AUTO MALL and dba
10 ACURA OF PLEASANTON; LOP AUTOMOTIVE
11 COMPANY LIMITED PARTNERSHIP f/k/a LOP
12 AUTOMOTIVE COMPANY LLC dba LEXUS OF
13 PLEASANTON; ROSEWOOD III AUTOMOTIVE
14 COMPANY, a general partnership, dba INFINITI OF
15 PLEASANTON; HENDRICK AUTOMOTIVE GROUP, a
16 North Carolina general partnership; HPG AUTO
17 INVESTORS LIMITED PARTNERSHIP; HENDRICK
18 MANAGEMENT COMPANY LIMITED
19 PARTNERSHIP,

20 Defendants.

Case No. 3:21-cv-00130 JSC

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**DEFENDANTS' ANSWER TO
PLAINTIFFS' COMPLAINT**

Complaint Filed: January 7, 2021
Hon. Magistrate Judge Jacqueline
S. Corley

1 COMES NOW Defendants PLEASANTON AUTOMOTIVE COMPANY, a general
2 partnership, dba PLEASANTON AUTO MALL and dba ACURA OF PLEASANTON; LOP
3 AUTOMOTIVE COMPANY LIMITED PARTNERSHIP f/k/a LOP AUTOMOTIVE COMPANY
4 LLC dba LEXUS OF PLEASANTON; ROSEWOOD III AUTOMOTIVE COMPANY, a general
5 partnership, dba INFINITI OF PLEASANTON; HENDRICK AUTOMOTIVE GROUP, a North
6 Carolina general partnership; HPG AUTO INVESTORS LIMITED PARTNERSHIP; HENDRICK
7 MANAGEMENT COMPANY LIMITED PARTNERSHIP (collectively "Defendants"), by and
8 through their counsel of record herein, hereby Answer the unverified Complaint ("Complaint") of
9 Plaintiffs AUTOMOTIVE INDUSTRIES PENSION TRUST FUND; AUTOMOTIVE INDUSTRIES
10 WELFARE TRUST FUND; JAMES H. BEMNO, Trustee; DON CROSATOO, Trustee; JOHN DI
11 BERNARDO, Trustee; RYAN THIBODEAU, Trustee; and RICH MORALES, Trustee (collectively
12 "Plaintiffs") allegations as follows:

13 1. Defendants lack sufficient knowledge or information to form a belief as to the
14 truth of the allegations contained in Paragraph 1, and therefore deny the allegations therein on that
15 basis.

16 2. Defendants admit Pleasanton Automotive Company, d/b/a/ Pleasanton Auto
17 Mall and d/b/a Acura of Pleasanton is a general partnership. Defendants admit LOP Automotive
18 Company f/k/a LOP Automotive Company LP, d/b/a Lexus of Pleasanton is a limited partnership.
19 Defendants admit Rosewood III Automotive Company, d/b/a/ Infiniti of Pleasanton is a general
20 partnership. Defendants admit the aforementioned business entities are registered to do business in
21 California. Defendants admit the aforementioned business entities' last known principal place of
22 business is Pleasanton, California. Defendants admit the general and/or managing partner of the
23 Pleasanton Automotive Company, LOP Automotive Company LP, and Rosewood III Automotive
24 Company is Hendrick Automotive Group, a North California general partnership. Defendants admit
25 Hendrick Automotive Group's general partners are HPOG Auto Investors Limited Partnership and
26 Hendrick Management Company Limited Partnership.

27 3. Defendants admit Pleasanton Auto Mall is principally engaged in the business
28 of operating car dealerships in the automotive industry. Defendants admit Pleasanton Auto Mall

1 employs machinists covered under the Bargaining Agreements and Trust Agreements. Defendants
2 admit Pleasanton Auto Mall's business affects commerce within meaning of Section 301 of the Labor
3 Management Relations Act ("LMRA"), 29 U.S.C. § 185.

4 4. Defendants admit this Court properly has jurisdiction because Plaintiffs seek to
5 enforce provisions of ERISA and seek relief under ERISA—a federal law.

6 5. Defendants admit this Court properly has jurisdiction by virtue of Section 301
7 of the LMRA because Plaintiffs seek to enforce the terms and conditions of a bargaining agreement.

8 6. Paragraph 6 alleges legal conclusions to which no response is required. To the
9 extent a response is required, Defendants admit venue is proper in this Court because a substantial
10 number of events in dispute occurred in this district.

11 7. Paragraph 7 alleges legal conclusions to which no response is required. To the
12 extent a response is required, Defendants admit Section 515 of ERISA, 29 U.S.C. § 1145 requires
13 employers who are obligated to make contributions to a multiemployer plan to do so in accordance
14 with the terms of the Bargaining Agreements.

15 8. Paragraph 8 alleges legal conclusions to which no response is required. To the
16 extent a response is required, Defendants admit ERISA § 502(g)(2), 29 U.S.C. § 1132(g)(2) provides
17 as alleged.

18 9. Paragraph 9 alleges legal conclusions to which no response is required. To the
19 extent a response is required, Defendants admit ERISA §502(a)(3), 29 U.S.C. §1132(a)(3) authorizes
20 a civil action by trustees as ERISA fiduciaries.

21 10. Paragraph 10 alleges legal conclusions to which no response is required. To the
22 extent a response is required, Defendants admit ERISA § 209, 29 U.S.C. § 1059 provides for
23 recordkeeping and reporting requirements.

24 11. Paragraph 11 alleges legal conclusions to which no response is required. To the
25 extent a response is required, Defendants admit the Trustees have a right under ERISA to conduct
26 an audit of a contributing employer's relevant books and records under the terms of the Trust
27 Agreements.

1 12. Defendants admit that at all times relevant to this action, Pleasanton Auto Mall
2 was a party to and bound by the Bargaining agreements covering its employees. Defendants admit
3 the Bargaining Agreements requires that Pleasanton Auto Mall contribute to the Funds at specified
4 rates for each of its eligible employees covered under the Bargaining Agreements.

5 13. Defendants admit Pleasanton Auto Mall, as an employer participating in the
6 Funds, is bound by the Trust Agreements, the terms of the Funds' Plan Documents, and the rules,
7 regulations, and policies adopted by the Trustees under the authority of the Trust Agreements.

8 14. Paragraph 14 alleges legal conclusions to which no response is required. To
9 the extent a response is required, Defendants admit a contractual duty according to the terms of the
10 Bargaining Agreements and a statutory duty to make timely payments in full to the Funds.

11 15. Defendants admit that under the provisions of the Trust Agreements, the rules,
12 regulations, and policies adopted by the Trustees adopted thereunder, Pleasanton Auto Mall was
13 required to timely submit monthly remittance reports of all covered employees, along with
14 contributions owed, to the Fund's principal place of business by the first day of each month following
15 the month in which the covered work was performed.

16 16. Defendants admit that under the Trust Agreements, and the rules, regulations,
17 and policies adopted by the Trustees thereunder, Pension and Welfare contributions received by the
18 Funds after the 20th day of the month following the month in which the covered work was performed
19 are deemed delinquent.

20 17. Defendants admit that at all time relevant to this action, in accordance with
21 ERISA § 502(g)(2)(b), 28 U.S.C. 1132(g)(2)(B), the Pension and Welfare Agreements, and the rules,
22 regulations, and policies adopted by the Trustees thereunder, delinquent contributions shall accrue
23 interest at the rate of ten percent (10%) simple interest per annum from the first day of the month
24 following the month in which the delinquent contributions were due through and including the date
25 payment is made. Defendants deny that any contributions were delinquent.

26 18. Paragraph 18 alleges legal conclusions to which no response is required. To
27 the extent a response is required, Defendants admit that at all times relevant to this action, in
28 accordance with the Pension and Welfare Trust Agreements and the rules, regulations, and policies

1 adopted by the Trustees thereunder, the employer is obligated to pay liquidated damages in the amount
2 of five percent (5%) of the amount of delinquent contributions owed until the matter was referred to
3 the Funds' counsel for collection, and twenty percent (20%) thereafter. Defendants deny that any
4 contributions were delinquent.

5 19. Paragraph 19 alleges legal conclusions to which no response is required. To
6 the extent a response is required, Defendants admit that at all times relevant to this action, the Trust
7 Agreements and the rules, regulations, and policies adopted by the Trustees thereunder, provided that
8 after the filing of a lawsuit, liquidated damages shall be increased to the greater of (a) the interest of
9 the delinquent contributions, or (b) twenty percent (20%) of the delinquent contributions. Defendants
10 deny that any contributions were delinquent.

11 20. Paragraph 20 alleges legal conclusions to which no response is required. To
12 the extent a response is required, Defendants admit that at all times relevant to this action, the Trust
13 Agreements and the rules, regulations and policies adopted by the Trustees thereunder provided that
14 in the event of a lawsuit, in addition to the contributions, interest and liquidated damages due to the
15 Funds, the delinquent contributing employer shall pay to the Funds all reasonably attorneys' fees and
16 costs incurred as a result of the litigation. Defendants deny that they were delinquent employers.

17 21. Paragraph 21 alleges legal conclusions to which no response is required. To
18 the extent a response is required, Defendants admit/deny that at all times relevant to this action, the
19 Trust Agreements and the rules, regulations and policies adopted by the Trustees thereunder,
20 authorized the Funds to examine and copy such records of Pleasanton Auto Mall as may be necessary
21 to determine whether Pleasanton Auto Mall has made full and prompt payment of all sums due to the
22 Funds.

23 22. Defendants deny the allegations as stated in Paragraph 22 of the Complaint.

24 23. Defendants deny the allegations as stated in Paragraph 23 of the Complaint.

RESPONSE TO FIRST CAUSE OF ACTION

For Payment of Delinquent Contributions, Interest, Liquidated Damages, Attorneys' Fees and Costs Against Pleasanton Auto Mall

24. In response to Paragraph 27, Defendants replead and incorporate by reference, as if fully set forth again herein, the responses contained in Paragraphs 1-23 of this Answer as set forth above.

25. Defendants admit Pleasanton Auto Mall is a party to the Bargaining Agreements and agreed to be bound by the Terms of the Trust Agreements, the rules, regulations, and policies adopted by the Trustees thereunder, and Plan documents.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint.

RESPONSE TO SECOND CAUSE OF ACTION

Injunctive Relief Under ERISA §§ 502(a)(3) and 502(g)(2)(E)

28. In response to Paragraph 28, Defendants replead and incorporate by reference, as if fully set forth again herein, the responses contained in Paragraphs 1-27 of this Answer as set forth above.

29. Defendants deny the allegations as stated in Paragraph 29 of the Complaint.

30. Defendants deny the allegations as stated in Paragraph 30 of the Complaint.

31. Defendants deny the allegations as stated in Paragraph 31 of the Complaint.

RESPONSE TO PRAYER FOR RELIEF

1. Defendants deny the allegations contained in Paragraphs 1, 1(a), 1(b), 1(c), 1(d), 1(e), 1(e)(i), 1(e)(ii), and 1(f) of the Prayer, and deny that Plaintiffs are entitled to the relief requested therein.

2. Defendants deny the allegations contained in 2, 2(a), and 2(b) of the Prayer, and deny that Plaintiffs are entitled to the relief requested therein.

3. Defendants deny the allegations that Plaintiffs are entitled to the relief requested in paragraph 3 of the Prayer.

1 4. Defendants deny the allegations that Plaintiffs are entitled to the relief requested
2 in paragraph 4 of the Prayer.

3 **AFFIRMATIVE DEFENSES**

4 Without admitting any of the allegations of the Complaint and without admitting or
5 acknowledging that Defendants bear any burden of proof as to any of them, Defendants assert the
6 following additional defenses. Defendants intend to rely upon any additional defenses that become
7 available or apparent during pretrial proceedings and discovery in this action and hereby reserve the
8 right to amend this Answer to assert all such further defenses.

9 **FIRST AFFIRMATIVE DEFENSE**

10 As a separate and distinct affirmative defense, Defendants allege they timely made all
11 required payments to the Pension Trust Fund pursuant to Defendant's obligations as set forth in the
12 collective bargaining agreement between Defendants and the Union.

13 **SECOND AFFIRMATIVE DEFENSE**

14 As a separate and distinct affirmative defense, Defendants allege that Plaintiffs, by their
15 own acts or omissions, have waived any purported claims for relief contained in the Complaint.
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17 **THIRD AFFIRMATIVE DEFENSE**

18 As a separate and distinct affirmative defense, Defendants allege Plaintiffs are not
19 entitled to injunctive relief because they have an adequate remedy at law.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 As a separate and distinct affirmative defense, Defendants allege that they provided
22 conclusive evidence to Plaintiffs that no contributions are due prior to the date on which this Answer
23 was filed. Plaintiffs nonetheless are determined to pursue the litigation without a good faith basis for
24 believing that any relief is warranted, thus entitling Defendants to their attorneys' fees and costs
25 pursuant to 29 U.S.C. §§ 1451(e) and 1132(g).

26 **PRAYER**

27 WHEREFORE, Defendants pray for judgment as follows:

28 1. That Plaintiffs take nothing by reason of their Complaint;

2. That judgment be entered on the Complaint in favor of Defendants and against Plaintiffs on all causes of action, and that the Complaint be dismissed with prejudice;
3. That Defendants be awarded its attorneys' fees and costs of suit incurred herein; and
4. For such other and farther relief as the Court may deem just and proper.

Dated: April 21, 2021

/s/ Robert G. Hulteng
ROBERT G. HULTENG
LAURA TOVAR
LITTLER MENDELSON, P.C.

Attorneys for Defendants
PLEASANTON AUTOMOTIVE COMPANY,
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ACURA OF PLEASANTON; LOP
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LIMITED PARTNERSHIP

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